

### REMARKS/ARGUMENTS

By this amendment, Claims 6, 13, and 21-40 are amended, and no claims are added or cancelled. Hence, Claims 1-40 are pending in the application.

The amendment to Claims 6, 13, 26, and 33 as indicated herein does not add any new matter to this application. Furthermore, the amendment made to Claims 6, 13, 26, and 33 as indicated herein has been made to exclusively improve clarity of the claims and not for the purpose of overcoming alleged prior art.

The amendment to Claims 21-40 to specifically recite a “computer-readable storage medium...” should also be entered in order to place the application in better condition for appeal because the original computer-readable medium claims cover a signal, which is non-statutory subject matter, whereas a “computer-readable storage medium” cannot include a signal because signals are incapable of storing instructions.

#### **I. SUMMARY OF THE REJECTIONS/OBJECTIONS**

Claims 1-5 and 21-25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2002/0143735 to Ayi et al. (“Ayi”) in view of U.S. Patent No. 5,787,428 issued to Hart (“Hart”). This rejection is respectfully traversed.

Claims 6-20 and 26-40 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,859,966 issued to Hayman et al. (“Hayman”) in view of Ayi. This rejection is respectfully traversed.

#### **II. THE REJECTIONS BASED ON THE CITED ART**

##### **A. CLAIMS 1-5 AND 21-25**

Claims 1-5 and 21-25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ayi in view of Hart. It is the Final Office Action’s position that the evidence

submitted is insufficient to establish a reduction to practice of the invention according to Claims 1-5 and 21-25 prior to the effective date of *Ayi* (page 2). The Final Office Action contends that the subject declaration (a) amounts to a general allegation and (b) lacks a statement of the facts demonstrating the correctness of the declaration, by the inventors, that the invention was reduced to practice prior to the effective date of *Ayi* (page 2). It is respectfully submitted that this is incorrect.

The Final Office Action fails to address any of the arguments presented in the response mailed on August 14, 2007. Therefore, much of the same arguments are included herein.

On page 3, the Final Office Action referred to a statement from representatives of the Applicants, which states:

Obviously, **test script files and test script log files do not show the actual code that performs recited steps.** Therefore, for example, it is difficult to show the step of “determining which policies...” and the step of “determining whether to perform the operation.” (emphasis added)

In response to this statement, the Final Office Action contends that “without correlating the limitations of at least the independent claims to Applicant’s Exhibits, the Applicant has failed to show possession of the claimed invention.” Representatives of the Applicants respectfully request the Examiner to point out in the CFR and/or MPEP where it is required that limitations of the claims must be correlated to exhibits. In fact, 37 CFR § 1.131 provides the standard for the sufficiency of a showing of a reduction to practice:

**The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference,** or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained. (emphasis added)

As is clear, an Examiner is not required to find a correlation between all the limitations in a claim and exhibits in order to find the sufficiency of a declaration under 37 CFR § 1.131. Rather, the standard is that the “showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference.”

Also on page 3, the Final Office Action quotes MPEP § 715.02, which states: “If the affidavit contains facts showing a completion of the invention commensurate with the extent of the invention as claimed is shown in the reference or activity, the affidavit or declaration is sufficient” (emphasis in the Final Office Action). **This section of the MPEP actually supports the Applicants’ position.** The present declaration satisfies the criteria specified in MPEP § 715.02, i.e., the declaration contains facts showing a completion of the invention commensurate with the extent of the invention as claimed. For example, the declaration states:

3. We conceived and **reduced to practice an implementation of claims 1 – 5 and 21 – 25** before the effective filing date of Ayi.
4. We participated on a team that developed the implementation of **claims 1 – 5 and 21 – 25** that is incorporated into an Oracle™ database server product. After the design phase of the development, **successful tests were run to show that the implementation worked according to claims 1 – 5 and 21 – 25**. These tests, which were conducted using standard internal test processes and procedures, were completed before the effective filing date of Ayi and were carried out in this country.  
(emphasis added)

Therefore, the declaration is sufficient.

On page 4, the Final Office Action provides patent office policy for actual reductions to practice under 37 CFR § 1.131, which office policy apparently states:

- a. Testing is required unless operativeness of invention is readily apparent.
- b. Testing, if required, must be under actual working conditions or realistic simulation of working conditions.
- c. Test results must be repeatable.

In support of this policy, the Final Office Action cited MPEP § 2138.05. However, MPEP § 2138.05 pertains to interference practice and 37 CFR 1.131 does not apply in interference proceedings (see MPEP 2138.01(III)). Neither the CFR nor the MPEP require testing in a Rule 131 declaration. Nevertheless, the inventors stated, in the declaration that “**successful tests were run to show that the implementation worked** according to claims 1 – 5 and 21 – 25” (§ 4; emphasis added). Furthermore, software tests are clearly repeatable. If § 4 of the declaration was considered by the Examiner, then it appears from this appeal for testing of the invention that the Examiner might want to personally witness tests being run. However, there is no such requirement. Instead, MPEP § 715.07(I) requires examiners to “consider all of the evidence presented in its entirety, **including the...declarations**” (emphasis added). Thus, because the declaration is also evidence of a reduction to practice of the invention, the declaration must be considered.

Finally, on page 4, the Final Office Action states that “the examiner cannot determine whether or not the reduced to practice invention is commensurate with the claims **without the nexus between the claim and the Exhibit. As a result, the Examiner has no basis to approve the affidavit**” (page 4; emphasis in the Final Office Action). It is respectfully submitted that the Examiner has ample basis to approve the declaration.

First, the statements by the inventors in the subject declaration are not hollow assertions. Rather, they are specific statements of fact. (Again see MPEP § 715.07(I) which states that evidence includes the declaration.) As such, the statements are considered evidence, each of which cannot be ignored.

Second, the courts have stated that “the PTO is required to accept Rule 131 Affidavits at face value, and without investigation” (see, e.g., *Herman v. Williams Brooks Shoe Co.*, 39 USPQ2d 1773, 1777 (S.D. N.Y. 1996); see also *Chisum on Patents* § 3.08[1][a] (2005);

emphasis added). Based on the specific evidence provided in the declaration, the inventors have satisfied their burden to prove that a working implementation of the invention according to Claims 1-5 and 21-25 existed prior to the effective filing date of *Ayi*.

Third, MPEP § 715.07 states, “**An accompanying exhibit need not support all claimed limitations**, provided that any missing limitation is supported by the declaration itself.” Indeed, exhibits are not even required by 37 CFR § 1.131 or the MPEP. Exhibits A-D are either test script files or test script log files that show results of running the corresponding test script. The exhibits do not provide the actual code. However, neither the CFR nor the MPEP **require code to be submitted** in an exhibit, nor do the CFR and MPEP require a declaration to state word-for-word each claim limitation. To require a declaration to state word-for-word each claim limitation would be mere form over substance since Applicants may simply recite each claim limitation and state that such claim limitation was implemented before a certain date. Nevertheless, the **inventors have done effectively as much when referring** (1) specifically to Claims 1-5 and 21-25 in ¶ 3, 4, and 9 of the declaration and (2) implicitly in the remaining statements. Therefore, it is odd that the Final Office Action would assert that “the examiner cannot determine whether or not the reduced to practice invention is commensurate with the claims.” Contrary to this assertion in the Final Office Action, the Applicants have given “a clear explanation of the exhibits [in the declaration] pointing out exactly what facts are established and relied on by applicant.” MPEP § 715.07.

As stated above, the Patent Office is required to accept Rule 131 declarations at face value, without investigation. Based on the foregoing, it is respectfully submitted that the declaration and the accompanying exhibits are sufficient to prove a reduction to practice of the invention. Accordingly, reconsideration of the declaration is respectfully requested.

## B. CLAIMS 6-20 AND 26-40

Claims 6-20 and 26-40 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Hayman* in view of *Ayi*.

1. *Claims 6 and 26*

Claims 6 and 26 recite:

**registering**, with a database management system, **one or more packages** of routines, wherein each package of said one or more packages implements a security model **that supports** a model set of **one or more policies** of the database policy set **and said each package includes an access mediation routine**;  
**associating a first policy**, of a first model set in a first package of the one or more packages, **with a first table** within the database system;  
**based on the association of the first policy with the first table, determining that the first policy applies to the first table**; and  
**in response to determining that the first policy applies to the first table, invoking the access mediation routine in the first package to determine, based on the first policy, whether to allow an operation on data in the first table.** (emphasis added)

Claims 6 and 26 require that: (1) a package is registered with a database management system; (2) the package implements a security model that supports a policy; (3) the package includes an access mediation routine; (4) the policy is associated with, and applies to, a table; and (5) the access mediation routine is invoked to determine, based on the policy, whether an operation on data in the table is allowed.

Fundamentally, Claims 6 and 26 require that **in response to determining that a policy of a package applies to a table, the access mediation routine of that same package is invoked to determine whether an operation is allowed on data of that table.** This feature is not taught or suggested by *Hayman* or *Ayi*, either individually or in combination. The Final Office Action cites *Hayman* for disclosing all features of Claims 6 and 26 except for the recited first table (page 9). *Ayi* is only cited to show that labels are applied to tables (page 9).

On page 8, the Final Office Action alleges that the “applicant admits that registering one or more packages of routines are well known in the art” on page 17 of the Specification. This is plainly incorrect. The italicized sentence below is taken completely out of context. The applicable language from the Specification states:

In step 212 a first security model package is registered with the security manager 132 of the database server 130. In some embodiments, the database security administrator designs and develops the security model package. In some embodiments the security model package is provided by the developer of the security manager 132, or is provided by a third party vendor, so that a database administrator does not have to develop her own package. For example, a security model package 110 that supports a compartmented security model is provided by the developer of the security manager, and the database security administrator registers the package 110 with the database server 130. *Any manner known in the art for registering the package at the time the package is registered can be used. For example, the database security administrator types in a name of the file containing the package in a dialog box of a graphical user interface for the security manager 132 of the database server 130 (page 17, paragraph 57) (emphasis added).*

Clearly, what is meant by “any manner known in the art for registering the package at the time the package is registered can be used” is that the manner in which a package is **identified** for being registered is not important (e.g., dialog box of a GUI or DOS command). However, nothing in the Specification implies or suggests that previous database systems actually register one or more packages of routines as claimed (i.e., wherein each package implements a security model and includes an access mediation routine). The Final Office Action and previous Office Actions have failed to address this argument.

Also on page 8, the Final Office Action asserts that “Hayman teaches incorporate and installation security software which inherently includes registering one or more packages of routines.” The portion of *Hayman* that refer to the incorporation and installation of security software describe a Session Monitor. The “Session Monitor has been designed to be extensible, in the sense that the owner of the security system can incorporate their own software to change

access mode of a user or administrator” (col. 8, line 66 – col. 9, line 2). Thus, the Final Office Action equates the Session Monitor with a package of routines.

The Session Monitor, however, “controls the manner in which a user or administrator initially gains access to the system, and the manner in which a user or administrator changes from their current mode of access to a different mode (for example, from user to administrator)” (col. 8, lines 55-60; emphasis added), whereas Claim 6 requires that a policy of a package is associated with a table within the database system. **There is no teaching or suggestion in *Hayman* that the Session Monitor, or any component thereof, is associated with a table within a database system.**

The Final Office Action also cites two paragraphs of *Hayman* that describe a Reference Monitor for teaching the first and third steps of Claim 6 (page 8). “The Reference Monitor is the entity that mediates all requests for access to an object by a subject, and thus controls whether, and to what extent, the subject is granted access to the object” (col. 9, lines 56-59). However, the reference does not disclose that a Reference Monitor may be registered so that it can be customized and implemented by the user. Indeed, the Reference Monitor was described in a version of Data General’s security system as being “tightly integrated with Data General’s operating system” (col. 1, lines 26-28). This indicates that customization is not readily possible and that the **Reference Monitor is actually an embedded native software component of the security system, not a separate package that can be registered.** Again, this is all in contradiction to the elements of Claims 6 and 26.

Col. 9, line 61 to col. 10, line 4 of *Hayman* further states:

The various subject-to-object access policies described above can be implemented by storing various policy data in an Information Security Policy Table database, which is maintained as part of the Reference Monitor.

The Information Security Policy Table database contains policy modules which



the Reference Monitor must invoke to check access. This table can be configured when the system software is first installed, to meet the specific security policy of the specific computer system. Further, the table can be altered when the security policy of the enterprise changes.

Perhaps the Final Office Action is equating (a) the policy modules in the Information Security Policy Table database of *Hayman* with the recited access mediation routine of Claims 6 and 26 and (b) the policy data stored in the Information Security Policy Table database of *Hayman* with the recited first policy of Claims 6 and 26. However, *Hayman* fails to teach or suggest that a policy module and policy data (1) originate from the same package (2) that is registered with a database management system.

The Final Office Action also alleges that *Hayman* col. 5, lines 18-60 teaches “associating a first policy of a first model set in a first package with” an object. To be clear, instead of an object, Claim 6 states that the first policy is associated with “a first table within the database system”. The Office Action equates the “labels” described in the above cited portion of *Hayman* with the “first policy” of Claim 6. However, the “first policy” of Claim 6 is a policy of a package **that is registered with a database management system. No where does *Hayman* teach or suggest in the above cited portion that a “label” is registered with a database management system.**

Thus, because *Hayman*, alone or in combination with *Ayi*, does not teach, suggest, or render obvious Claims 6 and 26, it is respectfully submitted that Claims 6 and 26 are patentable over the combination of *Hayman* and *Ayi*. Reconsideration and withdrawal of the rejection of Claims 6 and 26 under 35 U.S.C. § 103(a) is therefore respectfully requested.

## 2. *Dependent Claims*

The pending claims not discussed so far (Claims 7-20 and 25-40) are dependent claims that depend on an independent claim that is discussed above. Because each of the dependent

claims includes the limitations of claims upon which they depend, the dependent claims are patentable for at least those reasons the claims upon which the dependent claims depend are patentable. Removal of the rejections with respect to the dependent claims and allowance of the dependent claims is respectfully requested. In addition, the dependent claims introduce additional limitations that independently render them patentable. Due to the fundamental difference already identified, a separate discussion of those limitations is not included at this time.

### III. CONCLUSION

For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Please charge any shortages or credit any overages to Deposit Account No. 50-1302.

Respectfully submitted,  
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